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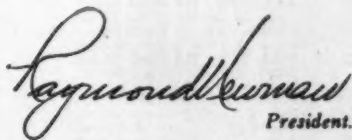
THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

This is the period of the year when the peak is reached in the number of corporation reports required to be filed with state officials. These requirements often cause concern to attorneys and corporation officials, because of the alterations and additions which are made in them from year to year by statute and regulation.

Those charged with the filing of such reports may wish to make a check of their own records by a reference to the calendar appearing in The Corporation Journal (see page 138), where the more important state reports due during the coming months are shown with their due dates.

The State of Georgia has adopted a new General Corporation Act, effective February 27, 1938, which applies to Georgia domestic corporations.


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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost (\$1.50).

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Interstate Commerce

Service of Process

While it may be said that a foreign corporation may enter a state in which it is not licensed and not be subject to liability to qualification fees or annual taxes—provided it limits its activities within the state strictly to the furtherance of interstate commerce—by reason of a provision of Article I, Section 8, of the Federal Constitution, it does not follow that all state statutes remain inoperative as to the corporation because of such interstate commerce activities.

For instance, in discussing the service of process upon such a corporation, the Supreme Court of the United States said, in *International Harvester Company of America v. Commonwealth of Kentucky*, 234 U. S. 579:

"We are satisfied that the presence of a corporation within a State necessary to the service of process is shown when it appears that the corporation is there carrying on business in such sense as to manifest its presence within the State, although the business transacted may be entirely interstate in its character. In other words, this fact alone does not render the corporation immune from the ordinary process of the courts of the State."

The following general observations may be of interest in this connection:

While there appears to be no decision to the effect that the mere maintenance of a bank account within a state would be regarded as "doing business" so as to give jurisdiction for the service of process, in several cases the maintenance of such an account was one of a number of activities, which, taken together, were held to validate service.

In those instances where an agent of an unlicensed foreign corporation has been entrusted with the collection of accounts within a foreign state, service of process has ordinarily been held valid.

Authority given to agents of an unlicensed foreign corporation to enter into binding contracts within a foreign state has usually resulted in the upholding of service upon it, while in a number of cases service has been set aside where the agent merely secured orders within the foreign state which were subject to approval and execution at a place of business outside the foreign state.

The sale and installation of machinery whether in the course of interstate commerce or not, coupled with an agreement to inspect or service, are uniformly regarded as "doing business" so as to result in effective service of process upon the corporation, when such service is made. (*To be continued.*)

Domestic Corporations

Florida.

A statute providing that service of process might be made in the alternative upon any one of a group of named corporation officials, these officials were held to be of equal rank for service purposes. The statute (Sec. 2604, R. G. S.) provided that service of process against any corporation might be served: "1. Upon the president or vice-president or other head of the corporation. In the absence of such head: 2. Upon the cashier, or treasurer, or secretary, or general manager; * * *" The sheriff's return showed that service was made upon the general manager of a domestic company, in the absence of the president and vice-president and other head of the corporation. In upholding the service, the Supreme Court of Florida, Division A, concluded that, under the statute, the cashier, treasurer, secretary and general manager are equal in standing for the purpose of such alternate service of process upon a corporation. *Cherry Lake Farms, Inc. v. Love, Judge, et al.*, 176 So. 486. R. C. Horne of Madison for petitioner. Milam, McIlvaine & Milam and J. Henry Taylor of Jacksonville, for respondents.

Illinois.

Suit against dissolved corporation, directors and stockholders dismissed where summons was not served on corporation until after end of two-year period fixed by statute. Plaintiff stockholder in defendant company brought suit in equity on behalf of himself and other creditors to recover from other stockholders certain unpaid stock subscriptions and to recover from the directors on the ground that they had assented to an indebtedness in excess of the corporation's capital. The lower court had dismissed the suit on the ground that it had not been instituted within the time limited by statute. Sec. 79 of the Corporation Act of 1919 had provided that "the dissolution for any cause, whatever, of any corporation, shall not take away or impair any remedy given against such corporation, its officers or stockholders, for any liabilities incurred previous to its dissolution, if suit therefor is brought and service of process had within two years after such dissolution." The corporation had been dissolved on June 22, 1932. While plaintiff had filed his suit on June 1, 1934, which was within the two-year period, and while service had been had on some of the stockholders and some of the directors before the two-year period had expired, the corporation itself was not served until after the expiration of the two-year period. The Illinois Appellate Court, First District, in affirming the decree dismissing the suit, ruled that the corporation was an essential party, "and since the summons was not served on it until more than two years after its dissolution, plaintiff could not maintain his suit." *Peter Sarelas v. McCue and Company et al.*, Illinois Appellate Court, First District, October 18, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 185818.

New York.

Court of Appeals rules against use of name by a foreign corporation similar to that of an existing New York company. A New Jersey corporation, "The Barber Company, Inc.," sought authority to do business in New York over the objection of a New York company named "Barber & Co., Inc." The companies were engaged in different types of business. The Department of State had denied the application of the foreign corporation because of the close similarity in the names. The New York Supreme Court, Appellate Division, Third Department, held, however, that there was not so close a resemblance in name as to be calculated to deceive, 297 N. Y. S. 939. (The Corporation Journal, November, 1937, page 34.) On appeal, the Court of Appeals has reversed the Appellate Division, reaching the conclusion that the corporate name of the New Jersey company so nearly resembled that of the registered company as to be calculated to deceive—a finding which is in accord with the original determination by the Department of State. *The Barber Company, Inc. v. The Department of State et al.*, New York Court of Appeals, January 18, 1938. Commerce Clearing House Court Decisions Reporting Service Requisition No. 190035.

Statutes of limitations applied in stockholder's representative action. A stockholder brought a representative action in equity for the benefit of his corporation, alleging several causes of action against defendant directors of the company based upon acts committed by them. The Court of Appeals of New York, in affirming the judgment of the Supreme Court, Appellate Division, First Department, *Potter v. Walker et al.*, 293 N. Y. S. 161, (The Corporation Journal, May, 1937, page 394), said: "In respect to those causes of action by which is sought to recover profits received by directors by reason of wrongful acts, an action at law would not afford adequate relief. To the extent that an accounting is necessary, the right and the remedy must necessarily be of an equitable nature. The Appellate Division is therefore clearly right in applying the ten-year statute of limitations as to such causes of action." The court indicated that a different rule would apply to the causes of action which were based merely upon the negligence of two of the directors who were not alleged to have participated in the receipt of any wrongful profits at the expense of the corporation, as a common-law action for damages would lie in connection with them, and that there the six-year statute (Civil Practice Act, Sec. 48, Subd. 3) would govern. *Potter v. Walker et al.*, 276 N. Y. 15, 11 N. E. (2d) 335. A. Lincoln Lavine of New York City, for plaintiff, appellant and respondent. Frederick H. Wood of New York City, for defendants, respondents and appellants, Walker, Armsby, Hayes and Marston. George L. Trumbull of New York City, for defendant, respondent and appellant Edward R. Tinker. David Paine of New York City, for respondent.

Foreign Corporations

British Columbia.

Registration of deed bearing facsimile seal directed by the Supreme Court of Canada. In *Re Land Registry Act, re Baird*, (1937) 3 D. L. R. 484, (The Corporation Journal, November, 1937, page 38), the British Columbia Court of Appeal held a Registrar of Titles justified in refusing to register a deed, executed by a trust company incorporated under the laws of the Province of Quebec, because of the fact that a duplicate facsimile seal of the company was affixed. On appeal, the Supreme Court of Canada reached an opposite conclusion, holding that to require an impression made by a particular seal would be an unnecessarily narrow interpretation of a resolution of the company authorizing its seal to be affixed to certain documents. "Properly read, the resolution contemplates an impression in the form prescribed by the by-law made by any stamp used by agents thereunto properly authorized on behalf of the company," said the court. The registration of the deed in question was therefore directed by the court. *Baird v. District Registrar of Titles*, (1938) 1 D. L. R. 61. W. F. Chipman, K. C., for appellant. L. S. St. Laurent, K. C., for respondent.

Massachusetts.

Service of process upon the general agent in charge of a combined office of railway and steamship companies, held valid. A Canadian steamship company had as its Boston representative an employe in the Boston office of a Canadian railway company, who was listed in the telephone book and on stationery as general agent of each company. He solicited passenger transportation for both companies, supervised a staff of solicitors, received money for tickets and sold travelers cheques. All money received was deposited in an account of the railway company, all withdrawals being made from Canada, where bills were paid and pay rolls prepared. Service of process upon the companies was made upon this general agent. The Supreme Judicial Court of Massachusetts holds these activities to constitute the doing of business by both companies sufficiently to subject them to the jurisdiction of the court. *Stein v. Canadian Pacific Steamships, Limited, et al.*, 11 N. E. (2d) 457. H. J. Stein of Boston, for plaintiff. R. W. Hall of Boston, for defendants.

Minnesota.

Appointment of agent for service of process upon withdrawal held to continue in effect after repeal of statute requiring such an appointment. Defendant foreign corporation was sued upon a contract which had been executed at a time when it was licensed to do business in Minnesota. The suit was instituted, however, subsequent to defendant's withdrawal from the state, by the service of process upon the secretary of state whom the defendant, in accordance with the

law in effect at the time of withdrawal, had appointed its agent for the service of legal process relative to matters arising while defendant had been licensed in Minnesota. Defendant moved to quash this service, for the reason that the section of the law calling for the appointment of the secretary of state as agent, sec. 7494 Mason's Minnesota Statutes, 1927, had since been repealed in the enactment of the 1935 Minnesota Foreign Corporation Act (Chapter 200, Laws, 1935) and that the appointment had thereby been vitiated. The United States District Court, District of Minnesota, Fourth Division, noted that while the repeal of the section had been effected as contended, the new law made no reference to powers of attorney which had previously been filed by foreign corporations which had withdrawn from the state, and said: "The execution of the power of attorney and its filing by the defendant corporation was done pursuant to a then existing and valid statute. The power of attorney has not been revoked by any act of the defendant. It was on the date of the service of process in this case in full force and effect, unless the repeal of section 7494 by the new Corporation Act abrogated and voided it." The court found that there had been no such voiding effected by the new statute and the service was therefore upheld. *Flour City Ornamental Iron Co. v. General Bronze Corporation*, 21 F. Supp. 112. Melrin, Brown & Sherman of Minneapolis, for the plaintiff. Francis D. Butler and Edgar G. Vaughan of St. Paul, for defendant.

New York.

Court refuses to assume jurisdiction of suit involving the internal affairs of a foreign corporation. Plaintiff, a stockholder in a Delaware corporation, who had in 1935 exchanged her preferred stock, upon which there were dividends in arrears at the time, for new preferred stock, plus a debenture of defendant company, two shares of its common stock and cash, under a plan of recapitalization and reclassification, sought in the New York courts to compel defendant to pay her and others similarly situated the unpaid accumulated dividends on her original stock and to enjoin defendant from paying dividends on its common stock until payment of these accumulated dividends. Plaintiff predicated her action upon a decision of the Delaware Supreme Court rendered after she had consummated her exchange, *Keller et al. v. Wilson & Co., Inc.*, 190 A. 115, (The Corporation Journal, December, 1936, page 270). The New York Supreme Court, Appellate Division, First Department, took the view that the granting of the relief sought would involve interference with the internal affairs of a foreign corporation and refused to assume jurisdiction. In concluding its opinion, the Court said: "The Delaware decision (*Keller et al. v. Wilson & Co.*, 190 Atl. 115) relied upon by plaintiff is not determinative of the question here. As we read that authority, it is merely to the effect that, if plaintiff succeeds in establishing her right to rescind the transaction whereby she transferred her accumulated preferred stock to the defendant in exchange for the new issue, she

might be entitled to an adjudication that she had a vested right in unpaid accumulated dividends. In this connection, however, it is to be noted that plaintiff here was not a protesting stockholder." *Fox v. Allied Stores Corporation*, New York Supreme Court, Appellate Division, First Department, December 23, 1937; Commerce Clearing House Court Decisions Reporting Service Requisition No. 188237; 300 N. Y. S. 1254. Sullivan & Cromwell (Inzer B. Wyatt, of counsel) of New York City, for appellant. Manuel Tancer of New York City, for respondents.

Pennsylvania.

Injunction issued against corporation adopting name containing initials comprising trade-name employed by plaintiff. Defendant, incorporated under the name of A. & P. Radio Stores, Inc., was restrained from using the letters "A and P" in its corporate name and otherwise in connection with its business, upon a suit by plaintiff, the Great Atlantic & Pacific Tea Company, which had used these letters for many years as a brand or trade-mark for its products so as to give their use great value as a trade-name. The injunction was issued despite the fact that there was no credible evidence of actual confusion of the public mind by the use of these letters by the defendant. The District Court, Eastern District, Pennsylvania, concluded, however, that "the defendant's incorporators did not use their own names but merely their initials, and these were used with the intention of misleading the public. It follows that they have stepped beyond the bounds of the law in thus adopting for their own purposes the trade-name of the plaintiff. Their action in so doing amounts to unfair competition with the plaintiff." *Great Atlantic & Pacific Tea Co. v. A. & P. Radio Stores, Inc.*, 20 F. Supp. 703. Sylvester J. Liddy of New York City, and Robert C. Walden of Philadelphia, Pa., for the plaintiff. Robert Levin and Philip Dorfman of Philadelphia, Pa., for defendant.

Texas.

Texas courts held not to have jurisdiction over a cause of action arising in another state. Defendant was a hotel management corporation. Among others, it supervised the management of a hotel in Chicago, Illinois, and of a hotel in Dallas, Texas, under contracts with the individual corporations owning the hotels. Plaintiff, an individual alleging a cause of action arising out of treatment received from employees of the Chicago Hotel, initiated suit in the Texas State District Court, which was removed to the United States District Court, where a motion was made by defendant to dismiss the case for want of jurisdiction. The court concluded that the action was instituted in the wrong state and that it would be "unjust to the defendant to be required to defend, in Texas, a suit that originated in Illinois. The affair happened there; all of the witnesses are there, and the plaintiff was there at the time of the alleged occurrence." *Moore*

v. National Hotel Management Corporation, United States District Court, Northern District of Texas, November 13, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 185468; 21 F. Supp. 177. Martin B. Winfrey of Dallas, Texas, for the motion. Thompson, Knight, Baker, Harris & Wright and J. Hart Willis of Dallas, Texas, opposed.

Utah.

Purchase of goods in Utah, for shipment to Missouri, held to be transaction in interstate commerce, not requiring purchaser to be qualified. Plaintiff unlicensed foreign corporation sued defendant company in Utah in connection with a contract entered into in Utah for the purchase of certain goods which had later been condemned and destroyed by the United States Marshal as being unfit for food, plaintiff seeking to recover the amount paid. One of defendant's contentions was that plaintiff was not entitled to recover as the contract was void as to plaintiff because its making constituted doing business in Utah by an unlicensed foreign corporation. The goods were shipped from Utah to plaintiff's warehouse in Kansas City, Missouri. The Utah Supreme Court held that Sec. 18-8-5, R. S. 1933, as amended, which provides that a non-complying corporation which does business in Utah shall not have the right to sue, prosecute or maintain any action in the courts of the state, and that any contract made in pursuance of such business by such a corporation shall be void, was not applicable to plaintiff, saying: "No case has been cited, and we have found none, holding that the purchase of goods by a foreign corporation under facts similar to those here is such 'doing business' as will bring the corporation within the terms of the statute. The mere purchase, even under a Utah contract, of goods in Utah to be shipped to Missouri is a transaction in interstate commerce which the Utah law regulating foreign corporations does not touch." *Kansas City Wholesale Grocery Company v. Weber Packing Corporation*,* Utah Supreme Court, November 17, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 185809; 73 P. (2d) 1272. Joseph E. Evans of Ogden, for appellant. DeVine, Howell & Stine and A. W. Agee, of Ogden, for respondent.

* Pertinent portions of opinion printed in *The Corporation Tax Service*, Utah volume, page 510.

Taxation

Delaware.

Bankrupt corporation's trustee held not personally liable for unsatisfied state tax claim neither scheduled nor brought otherwise to its attention. "An issue of law is presented" said the Circuit Court of Appeals, Second Circuit, "as to whether a trustee who has wound up a bankrupt's estate in obedience to court decrees may thereafter be held personally responsible for the unsatisfied tax claims of a state

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g YOUR investment?

A lawyer's time—taking into consideration the investment he has made in money for a specialized education and in years spent in acquiring experience in the law—has a certain, measurable value. And the lawyer who is forced to spend too much of his time in routine clerical work—*lay* work—is not getting the return he should get on his investment.

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cording of papers; they lift from his shoulders the worry about maintaining continuously a registered agent at a registered address in the state; they give him the assurance that subpoenas and other official communications will be given the kind of attention he wants them to have; they eliminate bothersome detail involved in meeting varying state reporting requirements in connection with taxes and reports and make the lawyer's handling of the company's corporate affairs in distant states as easy and certain as if only his own home state were involved.

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which were neither scheduled nor in any manner brought to its knowledge or attention. Such liability may be imposed only if an active duty of inquiry rests upon the trustee, a duty to ascertain at its peril the existence of taxes." "The statute," continued the court, "prescribes a procedure for the collection of tax claims from the estate and enumerates priorities which the trustee must recognize in the distribution of assets. There is not the remotest suggestion in section 64 (of the Bankruptcy Act, as amended, 11 U. S. C. A., sec. 104) that the trustee must go beyond the court records, beyond the scheduled claims and must ascertain the existence of taxes, referred to in subdivision (a), which are otherwise unknown to it." The claim being unscheduled and the absence of knowledge of it by the trustee being uncontroverted, a judgment dismissing the complaint was affirmed. *State of Delaware v. Irving Trust Company*,* 92 F. (2d) 17. Leaslee & Brigham (Ralph G. Albrecht and Martin A. Meyer, Jr., of counsel) of New York City, for the State of Delaware. Rosenberg, Goldmark & Colin (Godfrey Goldmark, of counsel) of New York City, for respondent.

* The full text of this opinion is printed in *The Corporation Tax Service*, Delaware volume, page 1533.

Federal.

Indication by stockholders under plan of reorganization that stock is to be issued direct to voting trustees held a taxable transfer of a "right to receive" the stock. The plaintiff company sought to obtain a refund of the Federal stock transfer tax paid under Schedule A-3 of Section 800, Title VIII, Revenue Act of 1926. As a result of a plan of reorganization involving other companies, plaintiff was organized and its stock, at the instance of the persons beneficially interested in it under the plan, was issued in the name of voting trustees. The payment of the original issue tax had been made and was not in controversy. The United States Court of Claims dismissed the petition for the refund on the ground that the tax was exacted because the right to receive the certificates by the beneficial owners was transferred, and that the grant of authority to issue the stock in the name of the trustees was a transfer of the "right to receive" within the meaning of the act. *Middle States Petroleum Corporation v. The United States*,* United States Court of Claims, May 3, 1937; motion for new trial dismissed, October 4, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition Nos. 177362 and 177362A; 18 F. Supp. 945 and 21 F. Supp. 128. (*Appeal filed in the Supreme Court of the United States, December 31, 1937; Docket No. 658.*)

* The full text of these opinions is printed in the *Standard Federal Tax Service—1937—*¶ 9284, 9496.

Inactive corporation held not subject to Federal capital stock tax. Plaintiff, an Idaho corporation, sought to recover Federal capital stock taxes paid under protest for the years 1933 and 1934. The tax

being applicable to corporations "carrying on or doing business," the plaintiff was held entitled to a refund upon facts showing that it had, prior to 1933, delivered exclusive possession of its properties by lease to another company and had not since then transacted any business, having reduced its activities to the mere holding and owning of property and the distribution of its avails and performing only acts necessary to continue that status. The decision was rendered by the United States District Court, District of Idaho, Southern Division. *United Mercury Mines Co. v. Viley, Collector of Internal Revenue*,* 20 F. Supp. 734. Hawley & Worthwine of Boise, Idaho, for plaintiff. John A. Carver, U. S. Dist. Atty., and E. H. Casterlin and Frank Griffin, Asst. U. S. Dist. Attys., of Boise, Idaho, for defendant.

* The full text of this opinion is printed in the **Standard Federal Tax Service**—1937—page 10,393.

Georgia.

Income tax law of 1929 held to apply to income from sale of products of Georgia mines sold in other states. The Supreme Court of Georgia has held that, under the income tax law of 1929, a New Jersey corporation with its principal office in New Jersey, owning certain lands and mineral rights in Georgia, mining clay there and shipping it out of Georgia on orders taken at the New Jersey office and at a sales office in New York, having no officer or business office in Georgia and making payment of its Georgia expenses direct from the New Jersey office, there being no Georgia customers for its products, was taxable under that act upon a proportion of its entire net income attributable to business done in Georgia. In so holding the court reversed the judgment of the Court of Appeals of Georgia, reported at 190 S. E. 623, (*The Corporation Journal*, June, 1937, page 423), to the effect that such income was not taxable. *State Revenue Commission v. Edgar Brothers Co.*,* Supreme Court of Georgia, November 11, 1937, rehearing denied December 9, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 187949; 194 S. E. 505. M. J. Yoemans, Atty. Gen., O. H. Dukes and Marshall L. Allison, Assts. Atty. Gen., for plaintiffs in error. Park & Strozier and Orville A. Park, Jr., of Macon, for defendant in error.

* The full text of this opinion is printed in **The Corporation Tax Service**, Georgia volume, page 1660.

Michigan.

Substantial compliance with franchise tax requirements held not to result in suspension of corporation. The provisions under the Michigan statutes for the suspension of corporate power for failure to pay the annual franchise fee are construed liberally by the Supreme Court of Michigan in connection with a corporation which had paid

the tax it had calculated was due, its report and payment being accepted without question at the time of filing, although several months later a demand was made for an additional assessment. This additional assessment remained unpaid for a year, at the end of which time the company was notified that its corporate powers were suspended. Later the company established that its original payment was in the correct amount, although there were errors in the report upon which the additional assessment had been based, and the commissioner issued a certificate that the corporation had been restored to good standing. The company's right to sue, during the time it was presumably in default was questioned by the defendants, and the Supreme Court of Michigan ruled there had been no suspension and reversed an order which had dismissed the suit. *L. J. Barry Coal Co. v. Houghten et ux.*,* 276 N. W. 550. Stanley S. Krause and Starr & Bessman (Isadore Starr, of counsel), of Detroit, for appellant. Rowland M. Connor of Detroit, for appellees.

* The full text of this opinion is printed in **The Corporation Tax Service**, Michigan volume, page 249.

Pennsylvania.

State Supreme Court, in construing the Corporate Net Income Tax Act, as originally enacted, holds it was mandatory for Department of Revenue to permit filing of consolidated returns. Upon appeal to the Pennsylvania Supreme Court from a ruling of the Court of Common Pleas of Dauphin County in *National Transit Company et al. v. Kelly*, (The Corporation Journal, October, 1937, page 16) to the effect that the Pennsylvania Corporate Net Income Tax Act, as originally enacted in 1935, made it mandatory for the Department of Revenue to permit the filing of consolidated returns, the Supreme Court, Middle District, has affirmed the holding of the lower court. The court concluded its opinion with the observation that the Act had vested the Secretary of Revenue with absolute power to determine which corporations might file a joint return and which might not. *National Transit Company et al. v. Boardman*,* Pennsylvania Supreme Court, Middle District, January 3, 1938. Commerce Clearing House Court Decisions Reporting Service Requisition No. 188814.

(Note: The re-enactment of the Corporate Net Income Tax Act by Act of April 8, 1937, contains a provision that "consolidated reports may be made only by corporations making consolidated returns to the Federal Government.")

* The full text of this opinion is printed in **The Corporation Tax Service**, Pennsylvania, page 1302.



Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

FEDERAL. Docket No. 658. *Middle States Petroleum Corporation v. The United States*, 18 F. Supp. 945 and 21 F. Supp. 128. (The Corporation Journal, March, 1938, page 134.) Federal stock transfer tax—corporate reorganization—transfer to voting trustees. Appeal filed, December 31, 1937.

INDIANA. Docket No. 641. *J. D. Adams Manufacturing Company v. Storen et al.*, 7 N. E. (2d) 941. (The Corporation Journal, June, 1937, page 424.) Validity of Indiana Gross Income Tax Law as applied to gross income of an Indiana corporation derived from interstate and foreign commerce. Appeal filed, December 17, 1937. Probable jurisdiction noted, January 10, 1938.

* Data compiled from CCH U. S. Supreme Court Service, 1937-1938.

Regulations and Rulings

CALIFORNIA—The Attorney General has ruled that if a corporation places its sign advertising its own product upon a building, it is not required to obtain or pay for the license provided for outdoor advertising. (California Corporation Tax (CT) Service, ¶ 7995J.)

FLORIDA—Where shares of stock are transferred on the books of a corporation from the name of one person to that of another, even though the person to whom the transfer is made acquires no beneficial interest in the stock transferred to him, the stock transfer tax must be paid, in the opinion of the Florida Attorney General. (Florida CT, ¶ 7894.)

INDIANA—A foreign corporation manufacturing a portion of its products in Indiana, which are shipped to its plants in other states where the final product is assembled and sold, is not subject to taxation under the Indiana Gross Income Tax Law. (Ruling of Gross Income Tax and Store License Division, Indiana CT, ¶ 15-012.)

NORTH CAROLINA—The Federal excess profits tax, being an income tax, is not deductible in computing the North Carolina income tax. (Opinion of Attorney General to the Commissioner of Revenue, North Carolina CT, ¶ 1620.)

TENNESSEE—The excise tax may not be imposed upon a foreign corporation maintaining an office in Tennessee which is engaged exclusively in interstate business, under an opinion rendered by the Attorney General to the Department of Finance and Taxation. (Tennessee CT, ¶ 1980U.) In an opinion to the Secretary of State, the Attorney General expressed the view that a foreign corporation which sends salesmen or agents into Tennessee to call upon retailers and solicit orders, which are turned over to various wholesalers who fill the orders and deliver the goods to the retailers, is doing business in the state. (Tennessee CT, ¶ 400.)

Some Important Matters for March and April

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Bulletins* of the Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding all state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARIZONA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

CALIFORNIA—Franchise (Income) Tax Return and Payment of one-half of tax due on or before March 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

COLORADO—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations making certain payments of dividends, interest or other income to citizens or residents of Delaware during 1937.

Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

DOMINION OF CANADA—Income Tax Return due on or before April 30.—Domestic and Foreign Corporations.

Annual Summary due between April 1 and June 1.—Dominion Companies.

GEORGIA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Report of Resident Stockholders and Bondholders due on or before March 1.—Domestic and Foreign Corporations.

IDAHO—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

IOWA—Income Tax Return, Return of Taxes withheld at the source and Returns of Information at the source due on or before March 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

KANSAS—Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

KENTUCKY—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Return of Withholding at the source due on or before April 15.—Domestic and Foreign Corporations.

MARYLAND—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

MINNESOTA—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

MISSISSIPPI—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement due within two months from April 1.—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.

NEVADA—Annual Statement of Business due not later than month of March.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

NEW MEXICO—Franchise Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before April 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3 IT—Article 9A, Tax Law) due on or before May 15, together with one-half of tax.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

OHIO—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

Quarterly Retail Sales Tax Return and Vendor's Excise Tax due on or before April 15.—Domestic and Foreign Corporations.

OKLAHOMA—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OREGON—Combined Excise (Income) Tax and Intangible Income Tax Return due on or before March 30.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Tax Report and Tax and Corporate Loans Report and Tax due on or before March 15.—Domestic Corporations.

Franchise Tax Report and Tax and Corporate Loans Tax Report and Tax due on or before March 15.—Foreign Corporations.

Bonus Report due on or before March 15.—Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

- RHODE ISLAND**—Semi-Annual Report to Department of Labor due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.
- SOUTH CAROLINA**—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
- SOUTH DAKOTA**—Income Tax Return and Returns of Information at the source due on or before March 30.—Domestic and Foreign Corporations.
- TEXAS**—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.
Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.
- UNITED STATES**—Annual Return of Net Income due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.
- UTAH**—Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.
- VERMONT**—Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.
Income (Franchise) Tax Return due on or before April 15.—Domestic and Foreign Corporations.
- VIRGINIA**—Income Tax Return and Returns of Information at the source due on or before April 15.—Domestic and Foreign Corporations.
- WEST VIRGINIA**—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
Annual License Tax Report due in April.—Foreign Corporations.
Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.
- WISCONSIN**—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with corporate representation by a business employee suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employee-representative's alimony.

What! We Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of *Rarden v. Baker* and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employees as corporate representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in *State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington*, of the Supreme Court of New Mexico in *Silva v. Crombie & Co.*, and of the Supreme Court of Michigan in *Rarden v. R. D. Baker Co.*—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1937.

The High Cost of Whistles for Corporations. Benjamin Franklin's classic, "The Whistle," here is shown, by the decisions in actual court cases, to have a very pointed application to some of the policies of some business corporations of our own day. A sixteen-page pamphlet for both laymen and lawyers.

What Constitutes Doing Business. (Revised to September 1, 1937.) A 168-page book containing brief digests of decisions selected from those in the various states, as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index makes them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

Tightened Reins on Business?

- As this is written, the U. S. House of Representatives has agreed to the Conference Committee Report on Senate Bill No. 1077 recommending important amendments to the Federal Trade Commission Act. Significant are its provisions on the finality of orders to "cease and desist," and false advertising of food, drugs, devices, and cosmetics.
- Change is the order of the day in the field of law affecting the regulation of trade practices in interstate commerce. Ordinary books are obsolete almost upon publication. But the loose leaf CCH TRADE REGULATION SERVICE keeps you constantly up-to-date.
- It is the complete reporter on the anti-trust laws and the Federal Trade Commission, covering all phases of unfair competition, including Price Discrimination, as well as Public Contracts, Bituminous Coal, Oil Control, and other federal trade regulatory laws, together with State Fair Trade, Resale Price Maintenance, Unfair Practice, and Anti-monopoly laws. It keeps you abreast of new laws, new FTC and Court decisions, new rulings, regulations, and developments as they occur.

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To name one of a corporation's business employes as its statutory agent when the company is being qualified as a foreign corporation is pleasantly simple, so easy, and practically costless. So the corporation's officers think.

But the lawyer knows—how well!—that then comes the old problem of Peter, Peter, Pumpkin-Eater—the *keeping* of the agent—keeping him *in the state* and keeping him *at the registered address*. A corporate agent who is not at the spot his legal

designation says he is, is no corporate agent at all—and a corporation doing business in a state without a corporate agent is leaving all its doors and windows open to whatever corporate trouble may be flying about.

The more careful the lawyer the more insistent he is that his clients have C T representation wherever qualified—so his client will always have a statutory agent in the state, and always have him at the legally designated address.

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